IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 572 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

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MOHMAD SAFI ABDULBHAI MAKATI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 572 of 2001

MR SHAKTISINH GOHIL for Petitioner No. 1

MR. A.J. DESAI,PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 04/12/2001

ORAL JUDGEMENT

1. Rule. Mr. A.J. Desai, Learned APP waives service of rule on behalf of respondent State.

2. It is submitted by Mr. Gohil, learned counsel for the petitioner-accused that, Condition No. 7 imposed in the order granting relief under section 438 and 439 of Cr.P.C. by Learned Addl. Sessions Judge, Bhavnagar, could not have bene imposed in as much as, by such condition the accused petitioner while granting relief under section 438 and 439 Cr.P.C. has been directed to deposit the amount allegedly taken by way of loan by him from complainant Bank. It is further contended that the amount alleged to have been taken by way of loan is a disputed amount and the petitioner accused has his defence as far as the alleged loan amount is concerned. Learned counsel further submitted that the complainant

Bank has filed Summary Civil Suit for recovery of the alleged loan amount and said suit is pending before Board of Nominee of Registrar at Bhavnagar, under the provisions of Co Operative Societies Act.

3. Mr. A.J. Desai, learned APP has fairly conceded that the condition requiring deposit/return of the alleged loan amount could not have been imposed while granting bail either under section 438 or 439 of Cr.P.C. by the Learned Addl. Sessions Judge, especially considering that the amount is disputed and for which civil dispute is pending between the complainant Bank and accused (defendant).

4. It need be hardly said that Condition No. 7 as above is not contemplated either under section 438 & 439 of Cr.P.C. and such a condition could not have been legitimately imposed by the learned Addl. Sessions Judge while considering application either under section 438 or 439 Cr.P.C. A condition which has the effect of enforcing the alleged claim of complainant cannot be imposed.

5. It, therefore, follows that, Condition No.7 imposed in the order dated 24-8-2001 under section 438 of Cr.P.C. and order dated 5-9-2001 under section 439 of Cr.P.C. in respect of C.R. No. I-128/2001 registered before 'C' Division Police Station, Bhavnagar, requiring the petitioner/accused to deposit the said loan amount deserves to be set aside and quashed.

6. In the result, the petition is allowed. Condition No. 7 in order dated 24-8-2001 under section 438 Cr.P.C. and order dated 5-9-2001 under section 439 of Cr.P.C. in connection with C.R. No. I-128/2001 registered before 'C' Division Police Station, Bhavnagar, requiring the petitioner to deposit the alleged amount is hereby set aside and quashed.

Rule made absolute to the aforesaid extent. Petition is disposed of. Direct service permitted.

Dt: 4-12-2001 (N.G. Nandi, J)

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